

UNPUBLISHED

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

UNITED STATES OF AMERICA,
Plaintiff-Appellee.

v.

No. 97-6956

LEROY BOONE,
Defendant-Appellant.

Appeal from the United States District Court
for the Eastern District of Virginia, at Norfolk.
John A. MacKenzie, Senior District Judge.
(CR-90-149-N, CA-96-372-2)

Submitted: February 10, 1998

Decided: February 25, 1998

Before WILLIAMS and MOTZ, Circuit Judges, and
HALL, Senior Circuit Judge.

Vacated and remanded by unpublished per curiam opinion.

COUNSEL

Leroy Boone, Appellant Pro Se. Albert David Alberi, Special Assis-
tant United States Attorney, Virginia Beach, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit. See
Local Rule 36(c).

OPINION

PER CURIAM:

Leroy Boone appeals from the district court's order dismissing without prejudice his motion filed under 28 U.S.C. § 2255 (1994) (current version at 28 U.S.C.A. § 2255 (West 1994 & Supp. 1997)). The district court found that before Boone could file a successive § 2255 motion, he must obtain authorization from this court to do so. Because we find that authorization is not required, we vacate and remand.

Boone filed a successive § 2255 motion on April 8, 1996, raising six claims. He then filed an addendum on April 25, 1996, contending that his conviction for using and carrying a firearm should be overturned in light of Bailey v. United States, 516 U.S. 137 (1995). Boone filed his § 2255 motion before April 24, 1996 (the effective date of the Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. No. 104-132, 110 Stat. 1214 ("AEDPA")). Moreover, the envelope in which Boone mailed the addendum bears a postmark of April 23, 1996. Under Houston v. Lack, 487 U.S. 266 (1988), the addendum is deemed filed when Boone handed it to prison officials for mailing--before the AEDPA's effective date. See Burns v. Morton, ___ F.3d ___, ___, 1998 WL 15128, at *4 (3d Cir. 1998). Because authorization from this court is not required, see Breard v. Pruett, ___ F.3d ___, ___, 1998 WL 19920, at *2 (4th Cir. 1998) (holding that pre-AEDPA law applies if habeas corpus proceeding filed before AEDPA's effective date) (citing Howard v. Moore, 131 F.3d 399, 403 (4th Cir. 1997) (en banc)), we vacate the district court's order and remand for further proceedings.

We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

VACATED AND REMANDED